IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/09/2004

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.A. NO. 3494 OF 2004
AND
W.A.M.P. NOS. 6764 & 6765 OF 2004

S. Pandian .. Appellant

- Vs -

1. Union of India by Ministry
of Railway, rep. by its Secretary
New Delhi.

2. The Railway Board
rep. by its Chairman
Ministry of Railway Bhavan
New Delhi.

3. The Indian Railway Catering and
Tourism Corporation Ltd.
rep. by its Chairman & Managing Director
Bank of Baroda Building
No.16, Parliament Street
New Delhi.

4. The Indian Railway Catering and
Tourism Corporation Ltd.
Southern Zonal Office
rep. by its Group General Manager
No.6-A, Braintree Place
9, McNichols Road, Chennai - 31.

5. V.Gangadharan .. Respondents

Appeal preferred against the order dated 17.9.2004 made in WPMP No.3
2029 of 2004 in WP No.26337 of 2004 as stated therein.

!For Appellant : Mr. T.R.Rajagopalan, SC, for
Mr. M.Sathyanarayanan

^For Respondents : Mr. R.Thiagarajan, SC, for

Mr. V.G. Suresh Kumar for RR1 to 4
Mrs.Nalini Chidambaram, SC, for
Ms. Gladys Daniel for R5
:JUDGMENT
(JUDGMENT OF THE COURT WAS DELIVERED BY
F.M.IBRAHIM KALIFULLA, J.)
The appellant is aggrieved by the order of the learned single Judge dated 17.9.04 in WPMP No.32029/04 in WP No.26337/04 in and by which the learned Judge in effect has vacated the earlier order of stay granted in favour of the petitioner as against the award of the contract dated 24.6.04 in favour of the 5th respondent by the 3rd and 4th respondents.

2. The main grievance of the petitioner, while moving the application for stay was that in the earlier year, (i.e.) 1999, on behalf of the 5th respondent a communication was addressed to the 2nd respondent herein, which is stated to have contained the signature of the 5th respondent and that when the said signature was compared with the present signature of the 5th respondent contained in the counter affidavit filed in this Court, it discloses complete variance in the signature and in the circumstances, the 5th respondent would not have been the real contractor and somebody else was impersonating the 5th respondent. Though initially interim stay was granted only on that basis by the learned Judge on 14.9.04, by the present order dated 17.9.04 the learned Judge on being satisfied that the 5th respondent himself was very much concerned with the contract g ranted in his favour, by making even his presence in the Court, and also the affidavits filed by the 3rd and 4th respondent, who awarded the contract in favour of the 5 th respondent, thought it fit not to continue the stay, as otherwise that would work against public interest.

3. Mr. T.R.Rajagopalan, learned senior counsel would vehemently contend that when such a glaring difference in the signature of the 5th respondent weighed with the learned single Judge while granting interim stay, unless that factum was satisfactorily explained, the interim order granted on 14.9.04 ought not to have been vacated. The learned senior counsel would therefore contend that the order of the learned single Judge in vacating the interim order without any justifiable reason is liable to be interfered with.

4. On the other hand, Mrs.Nalini Chidambaram, learned senior counsel appearing for the 5th respondent strenuously contended that the petitioner, who is also a partner in one other concern called "Ours Arya Bhavan" filed a writ petition in the Kerala High Court and since he was not favoured with any interim order by the Kerala High Court, the appellant adopted the ingenious attempt by filing another writ petition in this Court and was also successful in getting an interim order at the initial stage, which came to be vacated on 17.9.04.

5. Mr.R.Thiagarajan, learned senior counsel appearing for respondents 3 and 4 in his submissions stated that the appellant, the 5th respondent and two others were favoured with mobile catering contracts in the previous term and that at that point of time when the 3rd respondent came into existence and when the earlier catering contract was terminated, the appellant in fact

joined along with the 5th respondent and the other two contractors to challenge that proceedings and, therefore, the present stand of the appellant in questioning the very existence of the 5th respondent cannot be accepted. In any event, the learned senior counsel for the Railways made it clear that the contract was actually granted in favour of the 5th respondent and to the 5 th respondent alone and that the contention of the appellant that the 5 th respondent was only a name lender is not correct. The learned senior counsel made it clear that such a stand of the Railways as well as the 3rd and 4th respondents can also be recorded in this proceedings.

6. Having regard to the above said stand of the respondents, in particular, respondents 3 and 4 as well as the 5th respondent, we are convinced that the allegation of the appellant based on some difference in the signatures cannot be a ground for interfering with the contract issued by the 3rd and 4th respondent in favour of the 5th respondent.

7. Even if there were to be any difference in the signature, it is not for this Court to examine the same as pointed out by the Honourable Supreme Court in the judgment reported in BHARATHAN VS. SUDHAKARAN (1996 (1) KLT 466 (SC)). The Supreme Court made it clear that the Court should not undertake the hazardous task of comparing the disputed signature for setting aside the proceedings and it is within the province of an expert after scientific comparison of the disputed signature with the admitted signature. In the light of the decision of the Honourable Supreme Court, we do not propose to undertake the hazardous task of comparison of signatures in this case.

8. We, therefore, do not find any merit in this writ appeal. Accordingly, this writ appeal fails and it is dismissed. Consequently, connected miscellaneous petitions are also dismissed. No costs.

27.09.2004
Index : Yes
Internet : Yes
GLN
To
1. The Secretary
Ministry of Railways
Govt. of India
New Delhi.

2. The Chairman
Railway Board
Ministry of Railway Bhavan
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